

D.P.U. 94-161

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.P.U. No. 5, filed with the Department on September 19, 1994 to become effective December 1, 1994 by South Egremont Water Company.

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Petitioner

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FOR: DEPARTMENT OF PUBLIC UTILITIES
SETTLEMENT INTERVENTION STAFF
Intervenor

Town of Egremont
By: Egremont Board of Selectmen
Post Office Box 368
Egremont, Massachusetts 01258
Intervenor

Senator Jane M. Swift
State House, Room 407
Boston, Massachusetts 02133
Intervenor

Representative Christopher J. Hodgkins
Commonwealth of Massachusetts
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Intervenor

Gary Kobran
William H. Wood, Jr.
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Intervenor

I. INTRODUCTION

On September 19, 1994, South Egremont Water Company ("South Egremont" or "Company") filed with the Department of Public Utilities ("Department") a tariff of proposed rates and charges, M.D.P.U. No. 5, to take effect December 1, 1994. The proposed rates and charges were designed to increase the Company's retail revenues by \$181,111 or approximately 1630 percent. On September 23, 1994, the Department suspended the proposed rates until June 1, 1995, pending an investigation as to their propriety. The matter was docketed as D.P.U. 94-161. The Department appointed a Settlement Intervention Staff ("SIS").¹

After due notice, the Department held a public hearing on January 10, 1995 in Egremont, to afford the public an opportunity to comment on the Company's proposed rates. Over 100 persons attended the hearing. Attendees spoke about the level of the proposed increase, the quality of service provided by the Company, high levels of system losses due to leakage, and the Company's obligations with respect to the Commonwealth's Department of Environmental Protection ("DEP"), the Surface Water Treatment Rule ("SWTR") and the federal Safe Drinking Water Act ("SDWA"). The Town of Egremont, Senator Jane M. Swift, Representative Christopher J. Hodgkins, and the South Egremont Water Company Ratepayers Association were granted full intervenor status. No other petitions to intervene were filed.

¹ On June 4, 1990, the Department established the SIS process to promote negotiated settlements and to formalize institutional representation of ratepayers in water company proceedings.

II. ADEQUACY OF COMPANY'S FILING

South Egremont's rate application includes the following items: (1) copies of correspondence received from DEP; (2) copies of correspondence from the United States Environmental Protection Agency ("EPA"); (3) a cost estimate for a new well; (4) a bid from a meter manufacturer for 200 meters; (5) a metering surcharge calculation; (6) a plant capital recovery calculation; and (7) projected operating expenses for the years 1994 and 1995 (Company Initial Filing, Schs. 1 through 7).

A utility company's that requests a general rate change bears the burden of showing that the rates it proposes are just and reasonable. As part of its case on application, a utility company must file, among other materials, direct testimony and supporting schedules regarding revenues, expenses and capital structure, in order to support its proposed rates. Blackstone Valley Water Company, D.P.U. 90-27, at 2 (1990). Without the requisite information the Department cannot properly investigate the petition to determine whether the proposed rates are just and reasonable. The need for a complete application is particularly critical in this case, where a significant portion of the 1630 percent rate request rises from the Company's claim that significant capital expenditures are needed to comply with the provisions of the SDWA.

Department practice requires general rate increase filings to be based on a historical test year, adjusted for known and measurable changes. See Massachusetts Electric Company, D.P.U. 136, at 3, 9 (1980). South Egremont's filing consists of projected operating expenses for the years 1994 and 1995 (Company Initial Filing, Sch. 7). The Company's filing did not include any historical operating expenses or prefiled testimony to explain the proposed increase. The filing was devoid of information concerning its rate base or capital structure. Accordingly, the Department finds that the Company's filing is patently deficient in form and content.² There is

insufficient basis to weigh and judge the Company's claims. Because of these deficiencies we hereby dismiss the Company's petition.³

Also of concern is the status of the Company's compliance with directives from the DEP and the EPA regarding its compliance with the SDWA. On February 4, 1994, the EPA issued a Final Administrative Order against the Company directing South Egremont to retain a professional engineer to study the causes of the Company's violations of environmental regulations and recommend how to bring the system into compliance (Company Initial Filing, Sch. 1, at 6). While South Egremont says it hired an engineer in October of 1994 (see Response to Information Request DPU 1-7), the Company did not demonstrate that the engineer's recommended course is reasonable and is cost-effective when compared to other ways to comply. The Company must work with the DEP and EPA to explore other less costly ways to comply with the EPA's order, including applicable waivers.

Reducing leakage from the Company's system may be one such way. A December 1993 sanitary survey done by DEP shows that the average daily consumption on South Egremont's

² Through Information Request DPU 1-5, the Department sought to develop a record based on historic data adjusted for known and measurable changes. However, the Company's responses to this and other data requests are either insufficient or unresponsive. Completing rate cases (whether electric, gas, or water) within the statutory deadlines is hard enough without the added burden of drawing information out of a petition whose initial petition is inadequately supported.

³ The Department is concerned with other Company responses to the Department's information requests. We do not understand the Company's explanation found in Information Request 1-5 as to the nature of its proposed "Research and Development" expense. We also note that in response to Information Request DPU 1-8, the Company reported that there is no allocation of joint expenses between itself and its affiliate, Housatonic Water Works Company ("Housatonic"). The fact that both the Company and Housatonic share a common address and telephone on its face calls into serious question South Egremont's response.

system was about 100,000 gallons per day ("GPD"), with peak flows ranging to 182,000 GPD (see Response to Information Request DPU 1-6, January 3, 1994 letter to Company from Kurt Boisjolie, at 2). In the evident opinion of DEP, a system of South Egremont's size and customer characteristics would usually have an average daily use of between 55,000 and 60,000 gallons per day (id.). The Company's current 100,000 GPD consumption triggers provisions of the Water Management Act, G.L. c. 21G, whose permitting requirements would entail additional expenditures by South Egremont. The Company's leak detection survey performed in December 1994 indicates that approximately 53,280 gallons per day, or more than half of the Company's sendout, is leakage (see Response to Information Request DPU 1-6, Conservation Technologies report dated December 19, 1994). The Company acknowledges that if the leaks are repaired, system sendout would dramatically decrease (Response to Information Request DPU 1-7). A 50 percent reduction could reduce South Egremont's compliance problems under the Water Management Act, and could in turn lower the cost of compliance to ratepayers (see Response to Information Request DPU 1-7).

The Department does not lightly dismiss filings. Small water utilities face what is for them a major task in preparing and presenting rate requests. Because of the limitations of many small water companies, the Department instituted in 1990 a Settlement Intervention Staff to promote water company rate settlements. But the utter deficiency of the present filing puts it beyond the means of the SIS to help -- short of outright preparation of the Company's case for it, a role not appropriate for a regulatory agency's staff.

The Department's dismissal does not dispose of the issues such as South Egremont's revenue requirements or its efforts to achieve compliance with the provisions of the SDWA. The

Department expects the Company to correct these and other deficiencies in any future filing.⁴ The Company must work with DEP and EPA to develop a realistic proposal for complying with the SWTR and other environmental regulations, and at the same time provide service at just and reasonable rates. A future petition for a general increase in base rates must report on the Company's work with DEP and EPA to give its customers quality service at reasonable rates, consistent with the above directives. In short, a rate increase (especially a 1630 percent rate increase) needs more -- much more -- than the Company has to now seen fit to offer.

⁴ A number of small water companies have presented rate petitions in a format and context that permitted Department and intervenor review, such as the filing submitted in East Northfield Water Company, D.P.U. 93-243 (1994). We encourage the Company to consider this and other filings mutatis mutandis as a model for any future rate petition it may present the Department.

III. ORDER

After due notice, hearing and consideration, it is

ORDERED: That M.D.P.U. No. 5, filed with the Department on September 19, 1994 to become effective December 1, 1994 by South Egremont Water Company, be and hereby is DISMISSED, and it is

FURTHER ORDERED: That should South Egremont Water Company choose to resubmit its application, it do so in accordance with statute, Department practice and rules, and the directives in this Order.

By Order of the Department,

Kenneth Gordon, Chairman

Mary C. Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).